

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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Date: 1 June 2015

TRIAL CHAMBER VII

Before: Judge Chile Eboe-Osuji, Presiding Judge
Judge Olga Herrera Carbuccion
Judge Bertram Schmitt

SITUATION IN THE CENTRAL AFRICAN REPUBLIC

IN THE CASE OF

***THE PROSECUTOR v. JEAN-PIERRE BEMBA GOMBO, AIME KILOLO
MUSAMBA, JEAN-JACQUES MANGENDA KABONGO, FIDELE BABALA WANDU
AND NARCISSE ARIDO***

Confidential Document

***Prosecution Response to « Observations conjointes des équipes de défense suite à la
Première conférence de mise en état et requête afin de fixer certains délais (ICC-01/05-
01/13-T-8-Conf-FRA)» [ICC-01/05-01/13-940-Conf]***

Source: The Office of the Prosecutor

Document to be notified in accordance with regulation 31 of *the Regulations of the****Court to:*****The Office of the Prosecutor**

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I. Introduction

1. The Office of the Prosecutor ("Prosecution") responds to the joint Defence «*Observations conjointes des équipes de défense suite à la Première conférence de mise en état et requête afin de fixer certains délais* (ICC-01/05-01/13-T-8-Conf-FRA)» ("Defence Request").¹

2. *First*, the Prosecution reiterates² that it does not object to providing an amended Document Containing the Charges ("DCC") to accord with the Confirmation Decision,³ or a Pre-Trial Brief ("PTB") if ordered.⁴ However, should the Chamber require either at this stage, the time reasonably necessary to do so may have an impact on the viability of the Scheduling Order.⁵

3. *Second*, the Defence's request for a chart linking each item of evidence to the specific charges for future disclosures should be rejected,⁶ given the Chamber's decision on the modalities of disclosure.⁷ Such a chart is substantively no different than an "elements-based chart" ("EBC"), which the Chamber has explicitly rejected.⁸ Further, there is no merit in the Defence's request for the Prosecution to provide such a chart for past disclosures as an alternative to a PTB.⁹

¹ ICC-01/05-01/13-940-Conf.

² ICC-01/05-01/13-839, paras.3, 8; ICC-01/05-01/13-T-8-Conf-ENG ET, p.57. lns.16-19, p.62, l.5-p.63, ln.1.

³ ICC-01/05-01/13-749.

⁴ ICC-01/05-01/13-T-8-Conf-ENG ET, p.64, lns.3-15.

⁵ See ICC-01/05-01/13-960 ("Scheduling Order"). Pending the Chamber's determination of the matter, and given that the First Status Conference was held over one month ago, the Prosecution has assigned its limited resources to other aspects of its trial preparations in order to maximise its efficiency in view of the Scheduling Order.

⁶ ICC-01/05-01/13-940-Conf, para.29.

⁷ ICC-01/05-01/13-959.

⁸ ICC-01/05-01/13-959, para.33.

⁹ ICC-01/05-01/13-940-Conf, para.33.

II. Confidentiality

4. This Response is classified as “Confidential” as it refers to a filing of the same designation. The Prosecution does not object to the reclassification of the filing as a public document.

III. Submissions

A. Requests regarding the provision of an Amended DCC, PTB, and Chart linking the evidence to the charges

i. Provision of an updated DCC or PTB may not be required

5. The Prosecution defers to the Chamber regarding the necessity of filing an amended DCC to conform to the Confirmation Decision. Although the Court’s practice has generally required an amended DCC,¹⁰ the pre-trial procedure in this case has allowed the Defence to receive information adequate to proceed to trial, including through detailed Prosecution submissions and a Confirmation Decision citing the salient evidence underlying the relevant facts and circumstances.

6. Similarly, the Prosecution does not oppose providing a PTB, if directed.¹¹ However, the Chamber’s determination should fairly take into account, *inter alia*, the limited nature of the case, the length of the proceedings already elapsed and the extent of the information about the case already provided to the Defence.¹²

¹⁰ In *Gbagbo*, instead of an amended DCC, Trial Chamber I ordered the Prosecution to produce a pre-trial brief as “beneficial to the Defence in preparation for trial”. See ICC-02/11-01/15-58, paras.17-19.

¹¹ ICC-01/05-01/13-T-8-CONF-ENG, p.64, lns.3-15.

¹² ICC-01/05-01/13-T-8-CONF-ENG, p.64, lns.8-13.

7. Also, given the lack of complex legal contextual elements in this case, a PTB may be of limited utility, particularly, given the probable substantial overlap of its content with the detailed DCC and Confirmation Decision.

8. Finally, should the Chamber require that the Prosecution provide either an amended DCC or PTB at this stage, this may reasonably affect the continued viability of the Scheduling Order. The Chamber should take account of the proximity of the disclosure deadlines and start of trial,¹³ and the impact the reassignment of Prosecution resources—as will be necessary to timely complete these auxiliary documents—will have on its ongoing trial preparations.

ii. *Provision of a chart containing links between the evidence and the charges*

9. The Prosecution opposes the Defence Request for a chart containing “*le lien précis entre les éléments de preuve retenus et divulgués par le Procureur au soutien des charges contre les accusés, et une référence précise aux pages et paragraphes pertinents de ces éléments de preuve.*”¹⁴ Whereas the Defence proposes the provision of this chart *in lieu* of an EBC, the two charts are substantively the same. As argued in the Prosecution’s Response to Joint Defence Observations on Modalities of Disclosure,¹⁵ the Prosecution is not statutorily mandated to provide such information to the Defence, which is required to undertake its own analysis of the disclosed materials.¹⁶

10. Given that the Chamber has already rejected the Defence’s request for an EBC,¹⁷ this request—whether in relation to future or past disclosures—should be similarly rejected.

¹³ ICC-01/05-01/13-960, paras.12-13.

¹⁴ ICC-01/05-01/13-940-Conf, para.29. See also para.33.

¹⁵ ICC-01/05-01/13-933, paras.9-12.

¹⁶ See ICC-01/05-01/13-177, para.10.

¹⁷ ICC-01/05-01/13-959, para.33.

IV. Relief Requested

11. The Defence Request for a chart linking evidence to the charges should be dismissed.



Fatou Bensouda, Prosecutor

Dated this 1st Day of June 2015
At The Hague, The Netherlands